

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

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|----------------------------|---|----------------------------|
| PATRICIA LESTER, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | No. 10-2394-STA-cgc |
| |) | |
| CHECK SYSTEMS, LLC, |) | |
| |) | |
| Defendant. |) | |

ORDER OF DISMISSAL

On May 24, 2010, Plaintiff filed a Complaint (D.E. # 1) against Defendant. The record indicates that summons was issued on May 26, 2010. On September 16, 2010, Plaintiff filed her First Motion to Extend the Deadline to Serve Defendant with Summons and Complaint (D.E. # 4). Magistrate Judge Claxton granted the Motion and gave Plaintiff until December 20, 2010, to effectuate service of the Summons and Complaint upon Defendant. (D.E. # 5.) The docket shows no activity until August 31, 2011, when Magistrate Judge Claxton issued an Order to Show Cause ordering Plaintiff to show cause within ten days why the matter should not be dismissed. To this date, Plaintiff has not filed a response.

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Here, Plaintiff has already been ordered to show cause as to why her case should not be dismissed. The August 31, 2011, show cause order qualifies as

notice to Plaintiff as required by Rule 4(m). More than 120 days have passed since the filing of Plaintiff's Complaint, and there is no evidence that Plaintiff has successfully served Defendant. In fact, there has been no docket activity for nearly one year.

Therefore, this case is hereby **DISMISSED WITHOUT PREJUDICE** due to Plaintiff's failure to effectuate service of the Summons and Complaint prior to December 20, 2010 and Plaintiff's failure to show cause as to why the case should not be dismissed.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: November 8th, 2011.